

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7808 of 1998

with

SPECIAL CIVIL APPLICATION NO. 8428 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJUJI SHIVAJI @ CHHAGUJI CHAVDA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioners
MR GOHIL, Asstt. Govt. Pleader for
Respondent No. 1, 2, 3.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/02/99

C.A.V. JUDGEMENT

1. These two writ petitions under Article 226 of the Constitution of India, arise out of the detention of the petitioners made on 29th July, 1998, by the orders passed by the Commissioner of Police, Ahmedabad, on the same day under the provisions of Section 3 of Gujarat Prevention

of Anti-Social Activities Act, 1985 (PASA for short), on account of their alleged involvement in prohibition cases and bootlegging and other activities, so as to disturb the public order.

2. Learned advocate, Mr. Dave, appearing for the petitioners submitted that the orders of detention are bad for the reason that only three cases are registered against the petitioners and the investigation is still not complete. The reasons given for the arrest indicate occurrence of stray incidents on 20th June, 1998 and 1st July, 1998, the allegations of which are vague. The subjective satisfaction of the Police Commissioner cannot be said to be well founded. Mr. Dave pressed into service decision of the Apex Court in the case of (1) Piyush Kantilal Mehta v. Commissioner of Police, A.I.R. 1989 SC 491; (2) Jahangirkhan Fazalkhan Pathan v. Commissioner of Police, Ahmedabad, A.I.R. 1989 SC 1812; and (3) Amrat Ramabhai Vaghri v. Commissioner of Police, 1995(2) GLH 874. He also placed reliance on an unreported decision of this High Court in Special Civil Application no.3879 of 1996, in the case of Rajendra Bachubhai Rathod v. Commissioner of Police, Ahmedabad City, rendered on 4th October, 1996. He submitted that if the facts of the present case are considered in light of these decisions, the order of detention is bad in law and may, therefore, be quashed and the petitioners be ordered to be set at liberty.

3. Mr. Gohil, learned Assistant Government Pleader appearing for the State, has placed reliance on the decision of a Division of this High Court in the case of Kodarji Laxmanji v. Commissioner of Police, 1993(2) GCD 707 and a decision of the Apex Court in the case of Mrs. Harpeet Kaur v. State of Maharashtra, A.I.R. 1992 SC 979 and submitted that the petitioners are involved in bootlegging. They are using physical force against citizens to force them to facilitate the illegal activity, which affects the public order. The Commissioner of Police has recorded his subjective satisfaction in this regard and that the action is taken to prevent incidents like hooch tragedy, which may adversely affect the society in general and the order, therefore, may be sustained and the petitions may be dismissed.

4. Upon perusal of the reasons communicated to the petitioners for their detention, it is clear that both the petitioners are allegedly involved in the same offence and same activities. It is also apparent that the reasons given to both of them are identical and

similar adverbiam.

4.1 The petitioners are alleged to have been involved in three prohibition offences registered under Section 66(1)(b), 65E and 81 of the Bombay Prohibition Act for 93, 64 and 55 litres of country made liquor, respectively. All the offences are yet under the process of investigation. There is an averment regarding one instance on 20th June, 1998, where the petitioners are alleged to have intercepted the witness (whose identity has not been disclosed by virtue of protection under Section 9(2) of the Prevention of Anti-Social Activities Act, 1985) and having given abuses and fist and kick blows on suspicion of the witness keeping a watch over their activities and then informing the police. This episode resulted into collection of a crowd. The petitioners, therefore, drew out razors and threatened the said witness and then rushed towards the crowd, as a result, the crowd took a fright and fled away.

4.2 In the second incident of 1st July, 1998, the witness (whose identity has not been disclosed by virtue of protection under Section 9(2) of the PASA) was at his residence at about 8.00 A.M. when the two petitioners went in an automotive vehicle with stock of liquor and asked the witness to store the stock in his house for some time. The witness declined to do so out of fear of Police and, therefore, the petitioners got provoked and flung abuses at the witness, caught hold of him, dragged him out of his house, took him towards the road junction and gave him thrashing. The witness, therefore, raised shout, which resulted into collecting of a crowd. The petitioners, therefore, drew out knives and intimidated the witness and then rushed towards the members of the crowd asking them as to why they have gathered, as a result, the members of the crowd took a fright and ran away.

5. It is recorded in the reasons that because of the fear of the petitioners, nobody is prepared to lodge a complaint against them. It is also recorded that distilling, trading and trafficking of country made liquor had resulted, in past, in hooch tragedies and had cost many lives, and such activity of bootlegging may result into such tragedies in future. The petitioners are aware about this and, despite that, they are involved in bootlegging and, ultimately, the detaining authority has passed the order of detention.

6. The detaining authority has filed an affidavit-in-reply. In the affidavit-in-reply, by and

large the grounds stated in the reasons for detention have been reiterated. It has been stated further that the detenu along with his associates was dealing in liquor and there is likelihood of his continuing such business and it is resulting in hooch tragedy and thereby causing serious physical injury to the public at large and also further chances of causing large scale deaths due to such tragedies. The detaining authority, therefore, on careful examination and consideration of relevant documents and statements of witnesses, was fully satisfied that it is necessary to detain the petitioners under the provisions of PASA Act with a view to preventing the petitioners from acting in any manner prejudicial to the maintenance of public order.

7. It is evident that the detaining authority has detained the petitioners on account of and in order to prevent them from involving in such activities which, in his subjective satisfaction, were prejudicial to the maintenance of public order. For this subjective satisfaction, the reasons recorded are, the involvement of the petitioners in bootlegging, for which three offences are registered against them under Sections 66(1)(b), 65E and 81 of the Bombay Prohibition Act for 93, 64 and 53 litres of country made liquor, respectively, and two incidents are recorded wherein they have tried to disturb the public order to pursue their bootlegging activities are taken as basis. In this regard, decision of the Apex Court in the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City, A.I.R. 1989 SC 491, if perused, indicates that, factually, in that case, there were two prohibition offences registered against the detenu. In that case also, the detenu was alleged to have indulged in using force and beating people to pursue his bootlegging activity. In the said decision, Their Lordships observed that there is distinction between "law and order" and "public order". Relying on the decision of the Apex Court in Pushker Mukherjee v. State of West Bengal, A.I.R. 1970 SC 852, while quoting the observations of the Apex Court in that case, Their Lordships observed that: "it is true that some incidents of beating by the petitioner had taken place as alleged by the witnesses. But such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community. It may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger, he cannot be preventively

detained under the provisions of the Act unless, as laid down in sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order". Their Lordships also observed that sub-section (4) of Section 3, although is a deeming provision, it will not be attracted unless the activities of the person concerned affect adversely or are likely to affect adversely the maintenance of public order.

8. Keeping in light the principles enunciated in the above decision and considering the material on record, it is very clear that there is not a whisper in the reasons for detention to indicate involvement of petitioners in such activities which may cause hooch tragedy except that the country made liquor is injurious to health and that it may cause hooch tragedy and that detenu is aware about it and that he is still trafficking in country made liquor. Involvement in prohibition case for country made liquor by itself cannot lead to an inference that his activity is such as would adversely affect the even tempo of the society or that it is an activity prejudicial to the maintenance of public order.

9. In Piyush Kantilal's case (*supra*), the Apex Court observed that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order, which would be squarely applicable to the facts of the present case and, therefore also, the orders of detention become vulnerable. The statements recorded in the instant case, as can be seen from the reasons for detention and even the affidavit in reply filed by the respondent cannot, in any way, outweigh the statements which were considered by Honourable Supreme Court in the case of Piyush Kantilal Mehta (*supra*). It would, therefore, be more a question of 'law and order' and not 'Public Order' which can be taken care of by ordinary criminal laws and preventive detention cannot be justified in light of the observation made hereinabove.

10. The decision pressed into service by Mr. Gohil in the case of *Kodarji Laxmanji Thakore v. Commissioner of Police*, 1993(2) GCD 707, if perused, indicates that, in that case, considering the material on record, it was held that the petitioner was engaged in bootlegging activities as defined in Section 2(b) of the PASA Act and that there was evidence against him on record in detail to show his activities and the Court felt that there can

be no doubt that the cumulative effect thereof would clearly be to disturb public order. The Court further observed that when it is clear that when even tempo of public life is disturbed, it would come within compass of public order and whether the even tempo of public life is disturbed or not would be a question to be considered in light of facts and circumstances of each case.

11. As discussed above, the material on record of this case indicates nothing to show any disturbance to public order and, therefor, the above decision cannot help the respondent.

12. In the case of Mrs. Harpeet Kaur v. State of Maharashtra, the facts of the case were quite different. The detenu was indulged in activities of transporting of illicit liquor and used to keep Arms which led to fear psychosis and feeling of insecurity among the witnesses. Therefore, the activity was considered as prejudicial to public order and detention was held to be proper. Thus, this decision also cannot be applied to the facts of the present case.

13. In view of the above discussion, it is clear that detention orders under challenge are, therefore, bad in law. The petitions, therefore, deserve to be allowed and the same are, accordingly, allowed. The orders of detention in respect of petitioners made vide Annexure-A dated 29th July, 1998, are hereby quashed and set aside. The petitioners-detenu are hereby ordered to be released from detention forthwith, if they are not required in any other criminal case or proceedings. Rule is made absolute, accordingly.

[A.L. DAVE, J.]

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